

REMARKS

Presently, claims 1-38 are pending in the application.

Examiner Phone Conference

On September 14, 2006, the Examiner contacted Applicant's representative concerning the request for Pre-Appeal Brief Conference and Notice of Appeal filed on July 26, 2006. The Examiner indicated that prosecution of the present application would be reopened.

The Examiner further indicated that the claims of the present application would be allowable if a Terminal Disclaimer were to be filed in the present application against co-pending U.S. Patent Application No. 09/750,800 to Schlack ("the '800 application"), and that submission of a Terminal Disclaimer prior to issuance of any further official action would place the application in condition for allowance. Applicant thanks the Examiner for this notification and indication of allowable subject matter.

Double Patenting

The Examiner has indicated (via telephone conversation) that the claims 1-38 of the present application would be rejected under the judicially created doctrine of double patenting as being unpatentable over claims 62-71 of the '800 patent application. The Examiner contends that the subject matter claimed in the present application is common to that covered and disclosed by the '800 patent application.

Applicant has submitted herewith a Terminal Disclaimer under 37 C.F.R. §1.321(b), stating that the '800 patent application and the present application are commonly owned and disclaiming the terminal part of the statutory term of any patent granted on the present application which would extend beyond the full statutory term of

any patent granted on the '800 patent application. A statement under 37 C.F.R. 3.73(b), showing chain of title of the present application, is also enclosed herewith.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully submits that the application, including claims 1-38, is in condition for allowance. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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